

RECEIVED

DEC 21 1998

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Satellite Delivery of Network Signals	)	CS Docket No. 98-201
to Unserved Households for	)	RM No. 9335
Purposes of the Satellite Home	)	RM No. 9345
Viewer Act	)	
	)	
Part 73 Definition and Measurement	)	
of Signals of Grade B Intensity	)	
To: The Commission		

**REPLY COMMENTS OF MT. MANSFIELD TELEVISION, INC.**

Mt. Mansfield Television, Inc., the licensee of WCAX-TV, Burlington, Vermont ("Mt. Mansfield"), respectfully submits these reply comments in the above-captioned proceeding.

In their comments and associated engineering statements, the Satellite Broadcasting and Communications Association ("SBCA") and its members have proposed "modified planning factors"<sup>1/</sup> designed to create a standard radically different from the Commission's established standard for predicting Grade B television service. Indeed, the satellite industry's comments make very clear that what it is asking the Commission to do here is not to "modify [the] existing" standard that the Commission has developed for purposes of implementing its own organic statute, but to "adopt a new standard" solely "for SHVA

---

<sup>1/</sup> Engineering Statement of Benjamin F. Dawson III and David J. Pinion at 1 (attached to comments of SBCA).

No. of Copies rec'd at 8  
List ABCDE

purposes.”<sup>2/</sup> Thus, the satellite industry is really asking the Commission to do far more than “to turn a mouse into a monster.” NAB Comments at 30. It is asking to create that monster from scratch.

That is clearly not what Congress intended. SHVA codified the Commission’s approach to Grade B service reflected in 47 C.F.R. § 73.683.<sup>3/</sup> Whether or not the statute contemplated incorporation of ongoing revisions to that approach, it hardly contemplated implementation of a new and radically different standard that is conceded to be completely different from and independent of the Commission’s Section 73.683 standard. Nor is that something *the Commission* believed Congress intended it to do when SHVA was first enacted.<sup>4/</sup>

As NAB demonstrates in its comments, Congress also understood that the copyright license it was providing in 1988 would affect only about 1% of all U.S. households. It

---

<sup>2/</sup> Declaration of William H. Hassinger ¶ 4 (attached to comments of PrimeTime 24 Joint Venture). The satellite industry does not seek to “distur[b] the definition of the existing, well-established Grade B contour” or to “affec[t] the various rules, policies and decisions which rely on that contour.” *Id.* ¶ 11.

<sup>3/</sup> See H.R. Rep. No. 887, 100th Cong., 2d Sess. pt. 1, at 26 (1988) (citing 47 C.F.R. § 73.683(a)).

<sup>4/</sup> Congress did delegate other tasks to the Commission under SHVA, but this was not one of them. See NAB Comments at 31-32. The Commission’s own summary of these tasks made no reference to establishing a new Grade B standard for SHVA purposes. *Inquiry into the Existence of Discrimination in the Provision of Superstation and Network Station Programming*, 4 FCC Rcd 3883, 3884 (1989). Indeed, even with respect to these other tasks actually delegated by Congress, the Commission construed its mandate narrowly. It recognized the force of the legislative history that Congress “does not intend the Commission to address issues and concerns that are outside its jurisdiction and expertise.” *Id.* at 3886 & n.65 (quoting House report). It chose solely to “respon[d] to the specific request made by Congress.” *Id.*, 5 FCC Rcd 523, 529 (1989) (Further Notice of Inquiry). And it recognized that “[t]his Commission does not have authority to enforce the Copyright Act.” *Id.*, 6 FCC Rcd 3312, 3321 (1991) (Second Report).

clearly did not contemplate a wholesale transformation of the U.S. network television distribution system. And there should be no misunderstanding that this would be the effect of SBCA's proposal. Attached hereto is a map, prepared by Dataworld using the Longley-Rice model, and depicting the areas predicted to be eligible for loss of local CBS network service from WCAX under SBCA's assumptions. Those areas include communities throughout Vermont and the surrounding areas of upstate New York and New Hampshire, including much of the station's existing Grade A contour. In Vermont alone, these communities would include almost all of Windsor, Rutland, and Essex Counties; and most of Addison, Washington, Orange, Caledonia, and Orleans Counties. They would even include major portions of Franklin County, and portions of Chittenden and Lamouille Counties. The devastation such a result would wreak upon established traditions of high quality local broadcast service in the state of Vermont would be an unmitigated disaster.

Respectfully submitted,

**MT. MANSFIELD TELEVISION, INC.**



William R. Richardson, Jr.

WILMER, CUTLER & PICKERING  
2445 M Street, N.W.  
Washington, DC 20037-1420  
(202) 663-6000

December 21, 1998



